

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

JAMES DERRICK O'NEAL,

Petitioner,

Case No. 1:02-cv-357

vs.

District Judge Michael R. Barrett  
Chief Magistrate Judge Michael R. Merz

MARGARET BAGLEY, Warden

Respondent.

Death Penalty Case

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REPORT TO THE COURT WITH REFERENCE TO THE  
CINCINNATI METROPOLITAN HOUSING AUTHORITY RECORDS

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Comes now the Petitioner, by and through counsel, and reports to the court that there are no documents responsive to the subpoena all as more fully set forth in the attached affidavit of Brendan James, the person upon whom the subpoena was served.

Respectfully submitted:

Mr. Michael W. Krumholtz  
Attorney at Law 0009099  
Suite 400 National City Plaza  
6 N. Main Street  
Dayton, Ohio 45402  
(937) 223-3277

Lawrence J. Greger  
Attorney at Law 0002592  
Suite 1100 Liberty Tower  
120 W. Second St.  
Dayton, Ohio 45402  
(937) 223-3153

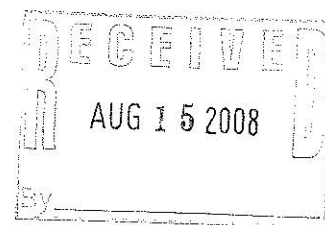
By: S/Lawrence J. Greger  
Trial Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Reply was sent to Mr. Stephen Maher, Assistant Attorney General, electronically, by using the court's CM/ECF filing system.

By: s/Lawrence J. Greger  
Trial Attorney for Petitioner

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AFFIDAVIT OF BRENDAN JAMES

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STATE OF OHIO                    )  
COUNTY OF HAMILTON    ) SS:

Comes now Brendan James, and after being duly cautioned and sworn, deposes and says:

- 1) I am an adult and competent to testify to the facts contained in this affidavit. I am testifying to facts that are within my personal knowledge.
- 2) I am Brendan James. I currently hold the position of Housing Choice Voucher Admissions, Assistant Manager. In that capacity I had a conversation with Lawrence J. Greger, who was requesting records for section 8 housing, dating back to the early to mid-1990's under the name Carol O'Neal and under contract number 4179 and handwritten 4938. After the conversation, I received a fax from Mr. Greger, which contained two pages. The two pages that I received were marked with the Joint Exhibit 3 sticker in the upper right hand corner, but they did not have the Exhibit 7 sticker in the bottom left hand corner, but in all other respects the documents are the same as those I received. Attached to this affidavit are true and accurate copies of the two pages that I received from Mr. Greger, except for the addition of the Exhibit 7 sticker.
- 3) On or about July 30, 2008, I received a subpoena to produce all of the records in the possession of the Cincinnati Metropolitan Housing Authority (CMHA) reference to Carol O'Neal and/or contract 4179, handwritten 4938.

- 4) As a result of the subpoena, I undertook an investigation to determine whether CMHA ever received any records as old as those requested by the subpoena, when the Hamilton County Section 8 merged with CMHA.
- 5) I found no documents in CMHA's possession responsive to the subpoena. On the second page of the documents faxed from Mr. Greger, is the name "Susan Walsh" with a telephone number. I called Ms. Walsh, who I knew to be the former director, to determine whether Hamilton County maintained any records in storage that were responsive to the subpoena. Ms. Walsh informed me that Hamilton County Section 8 had a records retention policy of five years, and that records from the early to middle 1990's would have been destroyed pursuant to that retention policy and that none of those records would be available. None were in storage from that long ago.
- 6) There are no records responsive to the subpoena because they were destroyed pursuant to the Hamilton County Section 8 retention policy, as told to me by its former Director Susan Walsh.

FURTHER THE AFFIANT SAYETH NOT.

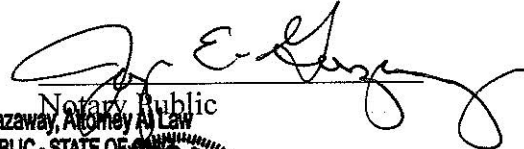
  
Brendan James

**ACNOWLEDGEMENT**

Before me a notary public in and for said County and State personally appeared the above named Brendan James, who swore that the facts contained in this affidavit were true and correct as she verily believed this \_\_\_\_\_ day of August, 2008.

9/9/08



  
Notary Public  
Joy Evelyn Gazaway, Attorney At Law  
NOTARY PUBLIC - STATE OF OHIO  
My commission has no expiration date  
Sec. 147.03 R.C.





JOINT  
EXHIBIT3 10-26-91  
6 it

Contract Number 4179

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

## EXISTING HOUSING

## HOUSING ASSISTANCE PAYMENTS CONTRACT

This Housing Assistance Payments Contract ("Contract") is entered into between  
the HAMILTON COUNTY PHA(PHA),  
which is a public housing agency as defined in the United States Housing Act of 1937, and  
KENNETH TAYLOR("Owner").

The purpose of this Contract is to assist the Family identified in section I(A) to lease a decent, safe, and sanitary dwelling unit from the Owner. The PHA will make housing assistance payments to the Owner on behalf of the Family in accordance with this Contract. The PHA has executed an Annual Contributions Contract ("ACC") with the Department of Housing and Urban Development ("HUD"). Under the ACC, HUD has agreed to provide financial assistance to the PHA to make housing assistance payments on behalf of eligible Families.

I. CONTRACT UNIT, FAMILY, AND LEASE.

- (A). This Contract applies only to the Family and the dwelling unit ("Contract unit") designated in this section.

Contract unit: 4938 PLAINVILLE ROAD, MADISONVILLE 45227(Address of Contract unit, including apartment number,  
if any, City, State and Zip Code)Family: CAROL O'NEAL(Name or names of Family representative(s))

- (B). The Owner shall lease the Contract unit to the Family. The Lease to be executed by the Family and the Owner for the Contract unit has been approved by the PHA, and shall be executed in the form approved. The Lease shall contain all provisions required by HUD, and shall not contain any provisions prohibited by HUD.

2. TERM OF CONTRACT.

The term of this Contract shall begin on SEPT. 1, 19 93. (Insert the first day of the term of the Lease. This date must be at least one year prior to the

EXHIBIT

7

Petition Exhibit D

HUD 52535 (5-84)  
(HB 7420.7)



# 4938 County of Hamilton

## BOARD OF COMMISSIONERS

STEVEN J CHABOT

JOHN S DOWLIN

GUY C GUCKENBERGER

COUNTY ADMINISTRATOR

DAVID J KRINGS

## DEPARTMENT OF COMMUNITY DEVELOPMENT

ROOM 507 COUNTY ADMINISTRATION BUILDING  
138 EAST COURT STREET

CINCINNATI, OHIO 45202

October 19, 1993

JAMES R. LOWRY  
DIRECTORDAN DOMIS  
DEPUTY DIRECTOR

PHONES:

COMMUNITY DEVELOPMENT  
(513) 632-8754HOUSING  
(513) 632-8771

## NOTIFICATION OF CHANGE TO LEASE AND HOUSING ASSISTANCE PAYMENTS CONTRACT

EFFECTIVE DATE OF CHANGE: 11-1-93OWNER'S NAME: Ken TaylorTENANT'S NAME: Carol O'NealADDRESS: 6226 Orchard LaneADDRESS: 4938 Plainville Rd.CITY: Cincinnati STATE: OH ZIP: 45213CITY: Madisonville STATE: OH ZIP: 45227

This form serves as an amendment to the Lease and the Housing Assistance Payments Contracts. As a result of the information the tenant has provided to Section 8, the following is a summary of the changes:

## HOUSING ASSISTANCE PAYMENTS CONTRACT

1. Family portion of rent.....\$ 151.00 per month
2. Hamilton County (PHA) Assistance Payment.....\$ 391.00 per month

## LEASE

Amount of rent: The total rent shall be \$ 542.00 per month. The tenant shall pay \$ 151.00 per month and the Hamilton County Section 8 Program shall pay \$ 391.00 per month.

Other Changes to the Lease: Please add tenant's step sons ( Jermaine Hudson and Cortez Hudson ) to lease, they are now residing in the unit.

If the Tenant's share of rent has increased, the Tenant is eligible for an informal hearing if the Tenant believes a mistake has been made. To arrange an informal hearing, the Tenant must call Susan Walsh at 632-8772 no later than November 2, 1993.

Sincerely,

*Jana Montesi*  
Housing Specialist II

cc: tenant